

shortest time was just over three months.^{30/} The average time to resolve Section 628 complaints through settlement has been almost thirteen (13) months.^{31/}

This protracted period for program access complaint resolution, whether by FCC decision or settlement, does not afford the Congressionally mandated expedited review required by Section 628. The inordinately lengthy time for decision is particularly disappointing because of the apparent lack of discovery in these Section 628 proceedings. Moreover, it appears that no Section 628 cases have been referred to an administrative law judge, as contemplated by the Commission's rules in complicated cases. See 47 C.F.R. §76.1003(m). In light of the Commission's seemingly exclusive reliance on its most streamlined procedures for resolving Section 628 complaints, it is inexplicable why the average processing time should be anywhere near as long as it is.

Ameritech, and others, have experienced this protracted pace of the program access complaint process. Ameritech and Americast

29/(...continued)

CSR 4198-P (complaint filed December 10, 1993, resulting in a thirty-two (32) month and nineteen (19) days review process).

30/ Bell Atlantic Video v. Rainbow Programming Holdings, Inc. and Cable Systems Corporation, CSR 4983-P (rel. July 11, 1997) (complaint filed on March 28, 1997 resulting in a three (3) months and fourteen (14) days review process).

31/ More cases have been settled than decided by the Commission, in part, likely because of the inordinately long time it takes for the Commission to render a decision. Based upon a review of the Commission's files, it appears that fifteen (15) Section 628 complaints have been settled while only nine (9) have gone to decision.

filed a program access complaint against Rainbow Programming Holdings, Inc. on December 6, 1996 which has been pending for over seven months without any resolution.^{32/} The prejudice to both aspiring competitors and the development of competition in the MVPD market resulting from this inordinately long review time is tangible.

In order for a competitor to exist, it must be financially viable. Every day a competitor pays higher, unfair license fees, it makes it less viable for it to exist. Every day Ameritech is unable to obtain programming on nondiscriminatory prices, terms, and conditions is a day it suffers demonstrable competitive harm. As Section 628 itself recognizes, Ameritech's injury correlates directly with injury to competition because refusals to deal or price discrimination translate into less competitively attractive programming offerings available to consumers.

It is also important to note that delays in resolving Section 628 complaints create inordinate pressure on complainants to settle and accept less favorable terms than they are entitled to receive, simply to improve their competitive position because it is impossible to penetrate the MVPD market without an attractive product. In its recent comments filed in Ameritech's Petition for Rulemaking, DIRECTV acknowledged this reality.

b. Prospective Competitors In The Video Marketplace Find It Extremely Difficult To Obtain Rate Information From Programmers To Prove Discrimination.

^{32/} Ameritech/Americast v. Rainbow Holdings Company, Inc., in CSR 4873-P, (filed December 6, 1996 and still pending).

The Commission's program access rules do not provide for a right to discovery for complainants. Rather, the Commission decided to adopt a system to promote resolution of as many cases as possible on the basis of a complaint, answer, and reply.^{33/} The right to discovery in a Section 628 proceeding is limited in that it is a discretionary staff determination. Such a restrictive approach to discovery defeats the objectives of Section 628 proceedings which center on factual determinations. Unless a complainant is fortuitous enough to obtain an admission by the defendant, it is virtually impossible to prove a price discrimination case without access to the rate cards at issue or discovery of the rates, terms, and conditions a programmer is charging incumbent cable operators or other similarly situated MVPDs. When a meritorious complaint goes unproven, the defendant cable operator or programming vendor is able to continue its unlawful activity with impunity to the detriment of the complainant and to competition as a whole.

**c. The Commission Has Declined To Impose
Fines Or Damages For Violations Of
Section 628.**

Congress sought vigorous enforcement of the program access rules embodied in Section 628, and to that end, gave the Commission plenary authority to provide for remedies under Section 628(e).^{34/} The Commission concluded "this authority is

^{33/} Program Access Order, 8 FCC Rcd at 3416.

^{34/} "(1)...[T]he Commission shall have the power to order appropriate remedies, including, if necessary, the
(continued...)"

broad enough to include any remedy the Commission reasonably deems appropriate, including damages."^{35/} The Commission reasoned that nothing in the statute limits the Commission's authority to decide what constitutes an "appropriate remedy", and "damages" clearly come within the definition of "remedy".^{36/} Despite this expansive interpretation of the breadth of its authority, the Commission has so far declined to exercise its authority to award damages because it did not think it was necessary. However, the Commission reserved the right to revisit the issue should it be brought to the Commission's attention that "the current processes are not working."^{37/}

Ameritech believes strongly that "the current processes are not working." The absence of economic penalties gives malfeasants under Section 628 a free ride. Violators reap the

34/ (...continued)

power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming to the aggrieved multichannel video programming distributor."...

"(2) The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under Title V or any other provision of this Act." 47 U.S.C. 628(e).

35/ Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (Development of Competition and Diversity in Video Programming Distribution and Carriage), 10 FCC Rcd 1902, 1911 (1994) (Memorandum Opinion and Order on Reconsideration of the Program Access Order), (hereinafter "First Reconsideration Order").

36/ First Reconsideration Order, 10 FCC Rcd. at 1910 (citing Black's Law Dictionary, (4th ed. 1968)).

37/ Id., at 1911.

benefits of the competitive injury their conduct is causing competitors every day the anticompetitive practices continue but face no countervailing consequences even when a violation is found. All they have to do is make the programming available prospectively on nondiscriminatory terms and conditions. In short, the Commission's current policy creates a situation where it makes good business sense to dispel competition and to violate Section 628.

Perhaps the most compelling evidence of the consequences of the Commission's failure to levy fines or assess damages is repeated violations of Section 628 by Cablevision, which through Rainbow Programming Holdings, Inc., owns interests in much sought after cable programming including: Sports Channel Ohio, Sports Channel Chicago, Sports Channel New York, American Movie Classics, Bravo, and the Madison Square Garden Network.

In 1995, the Commission ruled that Cablevision/Rainbow violated the program access rules by denying access to Sports Channel New York to Cellularvision.^{38/} On July 10, 1997, Bell Atlantic Video Services Company won its program access complaint against Cablevision/Rainbow for unlawfully refusing to sell its regional sports programming to Bell Atlantic.^{39/} In their July 17, 1997 comments filed in response to Ameritech's Petition for

^{38/} See, Cellular Vision of NY, L.P. v. SportsChannel Associates, 10 FCC Rcd 9273 (1995) (Memorandum Opinion and Order) in CSR 4478-P.

^{39/} Bell Atlantic Video Services Co. v. Rainbow Programming Holdings, Inc. and Cablevision Systems Corporation, in CSR 4983-P (rel. July 11, 1997) (Memorandum Opinion and Order).

Rulemaking, Bell Atlantic and NYNEX bitterly note that despite its "victory," Rainbow has emerged the winner from a business perspective because it has delayed Bell Atlantic in offering attractive programming and has suffered no financial penalty for its obstructionist and anticompetitive tactics. Finally, Ameritech and Americast also have a program access complaint pending against Cablevision/Rainbow alleging discriminatory pricing and practices associated with Sports Channel Ohio, Sports Channel Chicago, AMC and Bravo.^{40/}

In addition to formal Section 628 complaints, Tele-TV, a joint venture composed of NYNEX, Bell Atlantic, and Pactel, complained of difficulties obtaining sports channel programming from Cablevision.^{41/} The Wireless Cable Association International filed comments in the Commission's Third Annual Report describing Cablevision's refusal to grant certain members of its Association access to the American Movie Channel and Bravo.^{42/} In a related Section 616 complaint, the Cable Bureau recently designated for a hearing before an Administrative Law Judge Classic Sports Network's (CSN) program carriage complaint against Cablevision alleging that Cablevision had insisted on acquiring a financial interest in CSN as a precondition to

^{40/} See, Corporate Media Partners d/b/a/ Americast and Ameritech New Media v. Rainbow Programming Holdings, Inc., in CSR 4873-P (filed December 6, 1996).

^{41/} See, TELE-TV Reply Comments at 16, in the Third Annual Report.

^{42/} Wireless Cable Association International, Inc. ex parte letter dated November 18, 1996 in the Third Annual Report.

carrying CSN sports programming on its cable systems and that Cablevision allegedly had demanded exclusive rights to CSN programming against other multichannel video programming distributors (MVPDs).^{43/}

Such recidivist behavior demonstrates vividly the folly of not imposing fines or awarding damages for violation of Section 628. Quite simply, it is more profitable to disregard the law than to obey it because if a company is found to be in violation of the program access rules, the Commission merely requires it to comply prospectively with the law. The absence of concrete, economic disincentives is an invitation to repeat the offending, anticompetitive behavior. Ameritech submits that the Commission should change its policy and make clear that fines or damages will be assessed as a matter of course where there are Section 628 violations.

IV. MULTIPLE DWELLING UNITS POSE SIGNIFICANT CHALLENGES TO COMPETING CABLE PROVIDERS BECAUSE OF EXCLUSIVE CONTRACTS BETWEEN INCUMBENT CABLE OPERATORS AND BUILDING OWNERS AND UNDULY RESTRICTIVE CABLE INSIDE WIRING RULES.

Ameritech's experiences with multiple dwelling units ("MDUs") lead it to conclude that exclusive contracts for MDUs and anticompetitive inside wiring rules serve as severe impediments to the introduction of genuine competition for cable services to MDU residents.

^{43/} Classic Sports Network, Inc. v. Cablevision Systems Corporation, in DA 97-1498, released July 16, 1997 (Memorandum Opinion and Order in CSR-4975-P).

Through the end of June, 1997, Ameritech had contacted and conducted cable service negotiations with 931 buildings or MDUs. Ameritech reached agreement with 673 of the MDUs, representing 38,433 units, but has been unable to reach agreement with 258 MDUs, representing a total of 40,698 units or residences. Of the 258 MDUs which have denied Ameritech access, 127 MDU owners, of 22,215 units, cited the existence of an exclusive agreement with another cable operator as the reason for denial.

A. Exclusive Contracts Between Incumbent Cable Operators And Building Owners.

Not surprisingly, an analysis of this data indicates that incumbent cable operators tend to focus their efforts on securing exclusive contracts with owners of larger, more lucrative MDUs than smaller ones. Although Ameritech has been precluded from competing with incumbent cable operators in 28% of MDUs it has approached due to the existence of an exclusive agreement, Ameritech was denied access to 54.5 percent of the total number of units in these MDUs because of the existence of an exclusive agreement. Such agreements have an obvious harmful effect of precluding the development of competition because MDUs contain such a substantial number of potential viewers.

The incumbent cable operator's attempts to solidify its hold on the MDU market commences almost instantaneously upon news that Ameritech has secured a franchise serving that area. During the several months which elapse between securing the franchise and the onset of construction of the cable system, incumbent cable operators attempt to gain maximum competitive advantage by

blanketing the service area with exclusive agreements for MDUs and may resort to deceptive practices to deter building owners from negotiating with Ameritech. For example, in the Sterling Heights, Michigan area, Comcast, the incumbent cable provider, seems to have developed a strategy where if there is not a valid exclusive agreement in effect with an MDU owner, Comcast tries to extract one. First, Comcast may send the MDU owner a factually questionable letter reminding the owner that there is in fact an exclusive agreement.^{44/} Such a letter, alone, is likely to serve as the impetus to a cessation of any negotiations with Ameritech or other competing providers. Should the MDU owner dispute Comcast's intentionally misleading assertions, Comcast may well respond in writing, acknowledging that there is no valid exclusive agreement and enclose another agreement for execution by the MDU owner.^{45/} Such arguably unfair and deceptive practices have had a direct, adverse impact on Ameritech's MDU efforts in the Sterling Heights market. A number of MDU owners have asked Ameritech to cease construction on their MDU because of Comcast's threat of a lawsuit for breach of the so-called exclusive agreement.

B. Inside Wiring.

^{44/} See, e.g., Letter from Comcast to East Lakeside Apartments dated April 8, 1997, appended hereto as Attachment 7.

^{45/} See, May, 1997, exchange of correspondence between Comcast and the MDU owner and its counsel, appended hereto as Attachment 8.

While Ameritech has been somewhat successful in satisfying MDU owners' concerns that its installation of redundant wiring will not result in exposed, unsightly wiring throughout the MDU, more needs to be done to ensure access. Where MDU owners object to the installation of redundant wiring in their buildings, the incumbent cable operator often refuses to make the existing wiring available for use. In other words, he who controls the wiring controls access to the building.

In the Columbus, Ohio area Ameritech has attempted to work out an arrangement with Time Warner for use of inside wiring in a handful of MDUs where the MDU does not want duplicate wiring and Time Warner claims to own the wiring but does not have an exclusive agreement. Despite the concerted efforts of the MDU owner and Ameritech, Ameritech has been unable to garner any cooperation from Time Warner. This is not an isolated incident. Similar problems have been experienced in other franchise areas.

The Commission currently is conducting a rulemaking proceeding on cable inside wiring.^{46/} It should, as a matter of policy, allow access by competitive service providers to cable inside wiring by shifting the cable demarcation point for multiple dwelling units ("MDUs") to a lockbox at the entry point to the building or establishing a competitive access point at location(s) where the wiring becomes dedicated to the individual units. Cable operators or landlords should be prohibited from

^{46/} In the Matter of Telecommunications Services Inside Wiring; Customer Premises Equipment, 11 FCC Rcd 2747 (1996) (Notice of Proposed Rulemaking in CS Docket No. 95-194).

precluding access to the wiring by other competitive MVPDs. Such regulatory treatment would not result in a taking without just compensation in violation of the Fifth Amendment to the United States Constitution as long as the rules fairly compensated the incumbent cable operator for the cost of the inside wiring. It also would be consistent with the common practice of cable operators to abandon the inside wiring when a subscriber discontinues service unless it is ordered by the MDU owner to remove the wiring.

To the extent cable operators have expensed the cost of inside wiring, they already have been fully compensated, and no additional cost recovery is necessary. To the extent cable operators have amortized their inside wiring costs, it is appropriate for them to recover only the remaining unamortized cost of the inside wiring installed for the purpose of providing cable service.^{47/} The Commission could provide a market-based approach to ensure full compensation for such unamortized wiring costs. Thus, while cable operators would be able to retain ownership of cable inside wiring and recover the cost of the wiring, they would be prohibited from receiving additional, unwarranted compensation. Given the fact that cable operators themselves have the ability to ascertain which wires have been expensed or amortized, it is appropriate for cable companies to

^{47/} However, it is inappropriate to allow them to reap supposed "lost opportunity cost" of providing other future telecommunications services. Cable operators did not lay wire for those additional and purely speculative business purposes.

have the burden of proving that they have not already achieved full cost recovery of their inside wiring.

Limiting recovery to the cable wire replacement cost is entirely appropriate. In fact, in its earlier Cable Home Wiring Order, the Commission thought it entirely appropriate for cable operators to recover only the per-foot replacement cost, therefore, no "lost opportunity costs", when cable subscribers purchased the cable inside wiring within their premises, beginning at the demarcation point.^{48/}

While the Cable Home Wiring Order implemented the specific directives of Section 16(d) of the 1992 Cable Act, the Commission recognized new competitors to cable were likely to change the video programming marketplace.^{49/} The FCC stated, "[a]lthough we generally believe that broader cable home wiring rules could foster competition and could potentially be considered in the context of other proceedings, because of the time constraints under which we must promulgate rules as required by the Cable Act of 1992, we decline to address such rule proposals in this proceeding."^{50/} It is appropriate for the Commission to now adopt rules to reflect the changes in today's and more importantly, tomorrow's video marketplace.

^{48/} In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Cable Home Wiring, 8 FCC Rcd 1435 (1993), Report and Order in MM Docket No. 92-260 (hereinafter "Report and Order").

^{49/} Report and Order, 8 FCC Rcd. 1435.

^{50/} Id. at 1436.

It is imperative that the Commission allow other competitive video providers to have access to cable inside wiring in MDUs. This will help ensure the Congressional mandate of the Telecommunications Act of 1996 is realized. All viewers should be provided with access to alternative sources of video programming by eliminating artificial and competitive barriers to new technologies.

V. TO AVOID IMPERMISSIBLE DISPARATE REGULATORY TREATMENT IN THE VIDEO PROGRAMMING MARKET, THE COMMISSION SHOULD CLARIFY THAT CERTAIN SMATV PROVIDERS FALL WITHIN THE STATUTORY CLASSIFICATION OF CABLE OPERATORS, AND, THEREFORE, MUST OBTAIN CABLE FRANCHISES IN ORDER TO LAWFULLY PROVIDE CABLE SERVICES.

Regulatory parity among providers of video programming is paramount to full and fair competition. Congress recognized this and crafted the Telecommunications Act of 1996 to reflect such a premise by requiring that all entities providing video programming be subject to some form of regulation. Ameritech has opted to compete against traditional cable operators by providing cable programming as a cable operator subject to Title VI regulation. The Commission must vigorously enforce its rules so that companies like Ameritech will not be penalized merely because they comply with the law.

Recently, however, several companies have urged the Commission to rule that they are not cable operators, and, therefore, can provide cable service without obtaining a

franchise.^{51/} They take this position despite the fact that they provide cable service over a cable system over which they possess the requisite control and therefore, clearly fall within the statutory definition of a cable operator.

To permit ECI/TSC to prevail would result in a situation where they and other similarly situated MVPDs could avoid any regulatory oversight. It would create an absurdly uneven playing field to the detriment of cable operators and legitimate competitors to cable, alike. The immediate result would be that companies would seek to avoid FCC regulation and attempt to gain an anticompetitive edge in the video market. Municipalities and their constituencies also would be harmed due to lower franchise revenues. Consumers would be harmed because they would unknowingly have little recourse in the event of abuses by such "unregulated" operators. Ameritech has expended enormous resources to comply with the regulatory regime prescribed by the Telecommunications Act of 1996 and should not be competitively disadvantaged by the strained interpretation of the Communications Act urged by ECI/TSC in their Petition for Declaratory Ruling.

As Ameritech fully detailed in its Comments,^{52/} ECI/TSC are

^{51/} See Entertainment Connections, Inc. and Telecommunications Services Corporation Motion for Declaratory Ruling Regarding the Applicability of Section 621 of the Cable Communications Policy Act of 1984, as amended by the Telecommunication Act of 1996, filed February 18, 1997, in Docket No. D.A. 97-35.

^{52/} Ameritech New Media, Inc. Comments in Opposition to Motion for Declaratory Ruling Regarding the Applicability of Section 621
(continued...)

cable operators, and, therefore, are required to secure a cable franchise in order to lawfully provide cable service directly to subscribers.^{53/} ECI/TSC are purchasing tariffed telecommunications services from a common carrier and using rights of way which allows them to use the carrier's fiber as the physical means for distributing video programming directly to their subscribers. Such a business arrangement qualifies ECI/TSC as cable operators.^{54/}

Since cable operators are prohibited from offering cable service without a cable franchise,^{55/} and ECI/TSC qualify as cable operators, they too must obtain cable franchises for their transmission of video programming. The Commission should issue a prompt ruling, denying ECI/TSC's Request for Declaratory Ruling if the Commission is to ensure a level regulatory playing field for all competitors.

52/ (...continued)
of the Communications Policy Act of 1984, as amended by the Telecommunications Act of 1996, (D.A. 97-353) (filed March 10, 1997).

53/ Cable operators may not provide cable service without a franchise. 47 U.S.C. § 541(b).

54/ A cable operator is defined as anyone:
"(A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." 47 U.S.C. § 522(5).

55/ However, cable franchises should be required only in the municipalities where ECI/TSC actually offer video programming, not in every locality through which the wire may run.

VI. RECENT CONSOLIDATION TRENDS IN THE MVPD MARKET MUST BE SCRUTINIZED CLOSELY BY THE CONGRESS AND REGULATORY AGENCIES.

Ameritech is concerned with the recent trend of consolidation among powerful cable operators and programmers in the regional and national MVPD marketplace because of their implications for competition. Most noteworthy from the perspective of competition in the MVPD marketplace is the stark shift in the posture of NewsCorp from a self-proclaimed arch competitor to cable to one of the most powerful cable programmers with enormous leverage over cable operators, especially new entrants. In February, 1997, the announcement of the NewsCorp/Echostar direct broadcast satellite deal promised formidable competition to cable, even while it raised many concerns. Following the collapse of that merger, however, NewsCorp apparently has traded in competition to cable for carriage on cable. Recently, NewsCorp and Tele-Communications Inc. ["TCI"] agreed to purchase a forty percent stake in eight regional cable sports channels from Cablevision in an effort to form a new national cable sports network, Fox Sports Net.^{56/} The network will directly control 18 regional cable sports channels. The effects of this business arrangement are breathtaking:

"The purchase of 40% of Cablevision's assets will make Murdoch and TCI's chief, John C. Malone, two of the most powerful figures in

^{56/} See Paul Farhi and Leonard Shapiro, A Sporting Chance to be No. 1., Washington Post, June 24, 1997, at C1, appended as Attachment 9.

the sports television business.... A national cable sports network is just one part of the picture for Murdoch and Malone. By fitting it together with their broadcast, satellite and other cable networks, the two men will have achieved an unprecedented degree of 'vertical integration'- the ability to create programs and distribute them simultaneously."^{57/}

In addition, they also acquired a portion of the New York Knicks and Rangers sports teams and the Madison Square Garden from Cablevision Systems Corp. This partnership between NewsCorp and TCI, the largest cable operator in the United States, gives these companies enormous leverage in the MVPD marketplace.

Access to sports programming is so essential to the success of a cable system that many cable operators will pay exorbitant prices and agree to entertain other less attractive business arrangements just to obtain it. For example, under some foreseeable scenarios, cable operators will most likely be forced to carry FX Network, a less popular network, in order to gain access to the marque event in cable, NFL sports programming.^{58/}

The Fox Sports Net transaction is particularly noteworthy against the background of NewsCorp's proposed transaction with Primestar. NewsCorp has agreed to "hand over some satellite assets in return for a minority stake in Primestar Partners, a DBS, satellite broadcasting service headed by the big cable

^{57/} Id.

^{58/} See John Dempsey, Nets call rights blitz over NFL, Variety, June 30 - July 13, 1997, appended as Attachment 10.

television operators Time Warner Inc. and TCI."^{59/} Moreover, NewsCorp has recently announced the acquisition of the Family Channel.

The combined effect of these transactions, were they ultimately to be consummated and, where necessary, approved, would be to put enormous marketplace pressure on new entrants into the MVPD marketplace, like Ameritech, to "play ball" with these titans of the cable industry. This unprecedented level of concentration of ownership of critical cable programming assets among TCI, Time Warner/Turner and NewsCorp greatly increases the potential for extracting higher prices from cable operators to carry their programming. This additional clout of the programmers adversely affects newer, competitive cable operators disproportionately for several reasons. Independent, competitive cable operators do not have cable programming affiliates which profit from higher license fees and, therefore, they bear all of the burden and none of the benefit of higher programming rates. Moreover, new MVPD entrants, like Ameritech, have smaller subscribership and thus probably cannot secure volume discounts. Their dependence on key programming controlled by this close-knit group of programmers also makes them particularly vulnerable to pressure to carry less popular or redundant cable programming as the "price" of carriage of more popular programming.

^{59/} Steve Lohr, Murdoch Gets Primestar Stake In Pact With His Cable Rivals, New York Times, May 28, 1997 at D5.

There is no indication that the trend toward consolidation is going to be reversed. If anything, it appears to be gaining momentum. The Congress, the Commission, and other regulatory agencies must exercise their authority to scrutinize carefully these proposed business combinations to ensure that they do not impede the development of genuine competition in the MVPD market.

VII. INEQUITIES IN THE LEASED ACCESS RULES MUST BE ADDRESSED TO HELP ENSURE COMPETITION BLOSSOMS.

Currently, the methodology for calculating leased access rates appears to be skewed against new competitors and enables incumbents to retain their high subscribership rates. The leased access rules provide that the amount of money charged for the lease of a channel is dependent upon, among other factors, the number of subscribers on the system. The lower the subscribership, the lower the charge and conversely, the greater the number of subscribers, the greater the cable operator may charge for lease of a channel. Large, incumbent cable systems favor this methodology because they can charge much more than the new entrants, like Ameritech, for leasing channels.

As one may expect, it might take a considerable amount of time for a competitor to attain a large level of subscribers, all the while having to make some channels available for lease at ridiculously low prices. For example, if Ameritech's system had 5,000 subscribers, it would only be allowed to charge \$1.10 for the lease of a channel for one-half hour. This increases slowly

to \$22.25 for the lease of a channel for one-half hour for a system composed of 100,000 subscribers.

Moreover, since the rules do not specify how often the rates need to be recalculated to reflect changes in the number of subscribers, incumbents often do the recalculations infrequently. If a new entrant is eroding an incumbent's subscribership, the incumbent wants to avoid reflecting the decrease in subscribers for as long as lawfully allowed.

Therefore, Ameritech requests that the leased access rules be amended to allow a new cable competitor to charge rates similar to those being charged by the incumbent cable operator until such time as the competitor has achieved some adequate number of subscribers. Ameritech further requests that the rules specify how often a cable programming provider may adjust its rate to reflect a change in viewership. Such a change would address the issue of cable competitors being stuck garnering absurdly lower prices relative to the incumbent for similar programming.

VIII. CONCLUSION.

Ameritech has fought tirelessly to bring consumers genuine competition in the video marketplace. While Ameritech applauds the efforts of Congress and the Commission to create the opportunity for full and fair competition in the MVPD marketplace, it must be recognized that genuine competition has yet to arrive. Swift action by the Congress and the Commission

to rectify the above described problems which continue to impede the development of meaningful competition in the MVPD market will go a long way toward ensuring that genuine competition becomes a reality in the MVPD market.

Respectfully submitted,

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July 23, 1997

Ameritech New Media Cable TV Franchises

Ameritech New Media has completed franchises with 47 Midwestern cities and towns containing more than 930,000 households and a total population of more than 2 million. We now offer our enhanced cable TV service, called americast(TM), to consumers in 28 of these communities.

<u>Franchise</u>	<u>Date</u>	<u>Population</u>	<u>Competitor</u>	<u>Homes</u>
<u>Illinois</u>				
Glendale Heights*	08/95	30,000	TimeWarner	11,042
Naperville*	02/96	105,000	Jones Intercable	42,046
Vernon Hills	09/96	18,000	Jones Intercable	7,162
Glen Ellyn*	10/96	25,600	Jones Intercable	11,108
Arlington Heights*	01/97	75,500	TCI	35,122
Elgin	05/97	85,000	Jones Intercable	30,823
Illinois total:		339,100		137,303
<u>Michigan</u>				
Canton Township*	06/95	62,000	Continental Cablevision	26,305
Plymouth*	06/95	10,000	Continental Cablevision	4,854
Plymouth Township*	06/95	28,000	Continental Cablevision	10,903
Northville*	06/95	6,300	Continental Cablevision	2,671
Fraser*	11/95	14,000	Comcast Cable	6,025
Northville Twp.*	11/95	19,000	Continental Cablevision	7,836
Southgate*	12/95	30,000	Comcast Cable	13,319
Garden City*	04/96	32,000	Comcast Cable	11,964
Troy*	04/96	80,000	TCI	33,545
Wayne*	05/96	20,000	Time Warner	8,219
Lincoln Park*	07/96	42,000	TCI	17,100
Sterling Heights*	09/96	121,000	Comcast	47,880
Clinton*	10/96	95,000	Comcast	37,000
Mount Clemens*	12/96	18,400	Comcast	7,681
Madison Heights	12/96	32,200	Continental	13,049
St. Clair Shores*	02/97	68,000	Comcast Cable	27,166
Utica	02/97	5,000	Comcast Cable	1,989
Melvindale	04/97	11,200	Comcast Cable	4,039
Allen Park	05/97	31,100	Comcast Cable	11,915
Warren	06/97	145,000	Comcast Cable	56,200
Royal Oak	06/97	65,400	TCI	29,000
Trenton	07/97	20,500	TCI	6,250
Pleasant Ridge	07/97	2,800	TCI	1,100
Ferndale	07/97	25,100	TCI	10,340
Huntington Woods	07/97	6,400	TCI	2,401
Clawson	07/97	13,900	TCI	5,613
Berkley	07/97	17,000	TCI	6,647
Michigan total:		1,021,300		410,966

Ameritech New Media Franchises -- Page 2

<u>Franchise</u>	<u>Date</u>	<u>Population</u>	<u>Competition</u>	<u>Homes</u>
<u>Ohio</u>				
Hilliard*	03/96	18,000	Time Warner	8,086
Upper Arlington*	03/96	36,000	Time Warner	14,940
North Olmsted*	04/96	35,000	Cablevision Systems	13,899
Columbus*	04/96	600,000	T-Warner, Coaxial	316,048
Berea*	06/96	20,000	Cablevision Systems	7,810
Perry Township	07/96	6,500	Time Warner	1,663
Worthington*	09/96	19,000	Time Warner	6,570
Clinton Township*	10/96	4,500	Time Warner	2,236
Riverlea*	10/96	750	Time Warner	236
Blendon Township	12/96	11,300	Time Warner	3,901
Sharon Township	01/97	2,000	Time Warner	893
Fairview Park*	03/97	18,000	Cox Communications	8,140
Franklin Township	04/97	13,900	Time Warner	5,446
Marble Cliff	07/97	600	Time Warner	140
Ohio total:		785,550		390,008
Totals:		2,145,950		938,272

* Denotes communities where we now offer americast(TM) cable TV service.

(7/22/97)

